

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7079

BILL NUMBER: HB 1391

NOTE PREPARED: Jan 2, 2011

BILL AMENDED:

SUBJECT: Local Government Issues.

FIRST AUTHOR: Rep. Saunders

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Financial Report Reporting Date: The bill specifies that the annual report of a local governmental unit must be filed with the State Board of Accounts not later than March 1 of each fiscal year.

Township Assistance Standards: It provides that if the township trustee fails to file the township assistance standards with the board of county commissioners for the two preceding calendar years, the most recent annual appropriations and annual tax levy of the township are continued for the ensuing budget year. It requires the township board to adopt the township's standards for the issuance of township assistance not later than March 31 of each year. The bill provides that if the township board fails to adopt township assistance standards for the two preceding calendar years, the most recent annual appropriations and annual tax levy of the township are continued for the ensuing budget year.

Maximum Permissible Ad Valorem Property Tax Levy: The bill changes the methodology for calculating a civil taxing unit's "maximum permissible ad valorem property tax levy for the preceding calendar year" for purposes of calculating property tax levy limits.

Township Assistance Denied: The bill provides that if a trustee does not: (1) accept a completed application for township assistance; or (2) grant or deny a completed application for township assistance within the period required by statute; the application is considered denied, and the denial may be appealed to the board of commissioners.

Township Board Member Compensation: The bill provides that after December 31, 2014, the total

compensation and benefits paid to a township board member may not exceed \$5,000 per year.

Nepotism: The bill specifies that an individual who is an immediate family member of an officer or employee of a political subdivision may not be employed by the political subdivision in a position in which the individual would have a direct supervisory or subordinate relationship with the officer or employee who is the individual's immediate family member. It specifies that this provision does not require the termination or reassignment of a township employee from a position held by that individual before January 1, 2011.

The bill also provides that beginning January 1, 2015, an individual who: (1) makes \$10,000 or more annual salary; and (2) is an immediate family member of an officer or employee of a political subdivision; may not be employed by the political subdivision in a position in which the individual would have a direct supervisory or subordinate relationship with the officer or employee who is the individual's immediate family member. It provides that an employee of a political subdivision that violates the nepotism provision does not have to be terminated from any position held by that individual before January 1, 2011.

Location: It specifies that each township office must include the address and phone number of the township office in at least one local telephone directory. It also requires all township trustees (instead of certain trustees) to maintain a telephone answering service and respond to a telephone inquiry for township assistance services not more than 24 hours (excluding Saturdays, Sundays, and legal holidays) after receiving the inquiry. The bill requires a public meeting or a public hearing of a township legislative body to be held in a public place if one is available in the township.

Township Office Space Rental Payments: The bill provides that a township trustee may receive rental payments from the township for use of office space located in the trustee's private residence only if the space is used exclusively for conducting official township business. It also provides that a trustee may not receive rental payments for office space in the executive's personal residence at a square footage rate that exceeds the average square footage rate charged for comparable commercial office space. The bill requires the township trustee in the annual report to compare the square footage rate charged by the executive for rent of the office space in the executive's residence with the average square footage rate charged for comparable commercial office space in: (1) the township; or (2) the county seat of the county where the township is primarily located, if comparable commercial office space is not available in the township.

Effective Date: July 1, 2011.

Explanation of State Expenditures: *Penalty Provision:* A township trustee would be subject to being convicted for perjury, a Class D felony, for falsely certifying that the township is in compliance with nepotism provisions established under the bill. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Financial Report Reporting Date:* Every local government unit, entity, or instrumentality is required to submit a financial report to the State Examiner. The penalty for failing to make, verify, and file with the State Examiner is a Class B infraction and forfeiture of office. The date for making the report changes from 60 days after the end of the fiscal year to March 1 of each fiscal year under the bill.

There are no data to indicate how the date change will impact the number of reports outstanding. The maximum judgment for a Class B infraction is \$1,000, which would be deposited in the state General Fund.[In 2010, for counties, townships, cities and towns, libraries, and special districts subject to this provision, there were 373 (16.3%) that did not submit a report, 1,475 (64.6%) that submitted the report on time, and 435 (19.1%) that submitted the report late. The State Board of Account (SBOA) does not take action against local officials due to technical problems that the SBOA is in the process of promulgating rules to address.]

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. However, any additional revenues would likely be small.

Explanation of Local Expenditures: The bill will have indeterminate fiscal impact on township government with some provisions potentially adding cost and other potentially creating cost savings.

The nepotism prohibitions would have indeterminate fiscal impact if employees must be terminated or reassigned. The compensation costs differences between the cases where family members are providing services and a independent party provides the service will determine if there are additional costs or cost savings.

The requirement for a telephone answering service may minimally increase costs, as may the requirement to list each expenditure reimbursing an executive for use of the executive's private residence and making comparisons between the square footage cost and that of commercial property within the township or the county seat. Adopting annual standards for township assistance will add minimal costs as well.

Additional appeals may be made to the county board of commissioners if applications not acted on by the township trustee within the 72-hour time period for emergency applications are considered denied by function of law. This could increase the costs for hearings at the county-level, depending on the number of residents denied township assistance under this provision.

The bill could result in cost-savings for certain townships where township board members are paid more than \$5,000 annually beginning 2015. [With data available from 488 townships, the median salary for a township board member is \$522, ranging from \$100 to \$33,000. Of these township, there are 4 townships where board members receive compensation in excess of \$5,000.

Additionally, the amount of rent paid for office space in executive's residences could decrease, if the township has been paying more than the cost of comparable commercial space. [There are no data available to indicate how many townships would be effected by this change.]

Penalty Provision: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: The annual appropriation and annual tax levy for a township may be affected by the bill, if the township fails to file two copies of the budget adopted by the township for the ensuing year with the county auditor or fails to adopt or file township assistance standards for two calendar years. If the township's annual appropriation and annual tax levy remain unchanged increased costs may not be covered.

Maximum Permissible Ad Valorem Property Tax Levy: Prior to 2004, civil taxing unit maximum permissible levies were calculated each year by multiplying the previous year's maximum levy by the six-year average increase in Indiana nonfarm personal income (limited to 6% with some exceptions). A taxing unit that did not use all of its maximum levy in a year never lost the unused amount from its base.

Under SEA 1 - 2004, the calculation for the maximum levies was changed so that the new maximum levy was equal to the previous year's actual levy rather than the maximum levy. This change removed the previously unused portion of maximum levies from the base and eliminated any "banking" of unused levy authority in the future.

Under SEA 260 - 2006, the old maximum levy calculation and the "banking" of unused levy authority were partially restored beginning with taxes payable in 2007. One-half of the previous year's unused levy authority is available for use in the current year. Maximum levy authority that was lost in a year prior to 2007 was not restored.

Beginning with taxes payable in 2012 under this bill, the maximum levy calculation would revert to the pre-2004 calculation method. This means that any unused levy authority in a year would be available in all future years.

For taxing units that need to levy their entire maximum levy amount each year, this provision would have no effect. For other taxing units, this provision could have one of two effects, depending on the taxing unit. First, some units may currently levy their maximum amount each year even if it is not needed so that the unit does not lose one half of the unused amount. For these units, this provision could result in lower levies in years when the unit does not need the entire levy. Second, some units levy only what they need to levy, regardless of the fact that one half of the unused levy authority is lost each year. For these units, this provision could result in higher levies in years when the unit decides to take advantage of their unused authority.

In all cases, if a unit elects to use previously unused levy authority in a specific year, then taxpayers would be faced with a larger than normal increase in the tax rate in that year. However, if the unit has unused levy authority, the unit's tax rate growth might have been nominal up until the year that the unit uses the banked levy authority under this provision.

Penalty Provision and Financial Report Reporting Date: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Department of Local Government Finance, DOC, SBOA.

Local Agencies Affected: All civil taxing units, trial courts, local law enforcement agencies.

Information Sources: Bruce Hartman, State Examiner.

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